

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LISA MENNINGER,

Plaintiff,

v.

PPD DEVELOPMENT, L.P.,

Defendant.

Civil Action No.
1:19-cv-11441-LTS

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

FINAL PRETRIAL CONFERENCE

Thursday, March 16, 2023
2:01 p.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
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A P P E A R A N C E S

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P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

THE DEPUTY CLERK: Today is Thursday, March 16, 2023, and we are on the record in civil case number 19-11441, Lisa Menninger versus PPD Development, LP.

And would counsel please identify themselves for the record.

MR. HANNON: Good afternoon, Your Honor, Patrick Hannon on behalf of the plaintiff.

MR. WATSON: Hampton Watson on behalf of the plaintiff.

THE COURT: Good afternoon.

MR. MANDEL: Good afternoon, Your Honor, Rachel Mandel on behalf of Defendant PPD.

MS. CURRAN: And Patrick Curran on behalf of the defendant, as well.

THE COURT: I'm sorry, I didn't catch your last name.

MR. CURRAN: Curran.

THE COURT: Curran. Sorry. Thank you. Good afternoon.

1 So let me tell you what I want to go over, and then
2 I'm happy, when we're done with all of that, to go
3 over anything else you want to raise.

4 I'm assuming you didn't come here, the five of you,
5 to tell me that you had settled the case, and so I'm assuming
6 that means we're going forward.

7 And I'll just say one thing about that. I know you
8 went -- you went to mediation, like, awhile ago. I forget
9 with whom. A private mediator, right?

10 MR. HANNON: Yeah. It was Mr. Maffei, Tom Maffei.

11 THE COURT: So some of you -- I think Mr. Hannon,
12 maybe in January, tried a case in front of me, a different
13 kind of case, somewhat different than this, and might have
14 heard my longer, like, "think about it" speech. And I'm not
15 going to give you -- I usually say that, if I give it -- I
16 don't give it in every case. And when I give it, I usually
17 prefer to only give it when the parties are present if I
18 think there's a good reason. And I'm not -- I'm not going
19 to -- I'm not giving it now, and I'm not going to tell you to
20 bring your clients in to hear it. And I'm not inclined to
21 give it on Monday when they're here before we have the jury,
22 mostly because you all seem familiar with the case, you
23 understand what the issues are.

24 And what's important to me, I'll just tell you, is
25 not whether you settle the case or you don't settle the case,

1 what's important for me is that you, Mr. Hannon, and your
2 client, and for you, Ms. Mandel, your client, whoever is the
3 determining person for the company, makes an informed and
4 intelligent decision about whether to settle the case on the
5 best terms they can get or to go to trial. Those are the
6 only two choices. Right? And that people -- and that the
7 only way to make an informed, intelligent decision to do that
8 is to appreciate -- appreciating the risks and benefits.

9 And so I have no reason -- there's nothing about
10 this case that makes me think that either counsel or the
11 parties aren't appreciating the risks and benefits. And I
12 sometimes do it even if I think people do appreciate the
13 risks and benefits, because sometimes I think it's helpful to
14 hear it from the judge. But that is what I think is really
15 important, that people appreciate that.

16 And I will tell you that when I have cases that go
17 to trial where I think someone didn't appreciate that, it's
18 troubling, concerning, because it means they weren't well
19 counselled, usually. Sometimes they were well counselled and
20 they wished not to listen to the counsel. And that's a
21 different issue, and that's, like, people's choice. Right?

22 So I'm not going to give you all that. I don't
23 have any -- my sense is that people -- that you've talked to,
24 you went through an experienced mediator. You had it, it
25 didn't settle, that's fine. And I can see that the issues --

1 that there are issues here, and I can see -- there are
2 triable issues.

3 The only thing that I just leave for your
4 consideration is that -- an observation, and you do with it
5 what you will. And if you wish to do something about it, you
6 can come to me, but otherwise I'm done with the topic, I
7 think. Which is, in my experience, that in cases in which
8 there are individuals who are parties, particularly
9 individuals who are wronged, sometimes there is an extra
10 power, in an odd way, of wearing a black robe and trying to
11 settle a case. And the combination of wearing a black robe,
12 in your courthouse, trying to settle a case, that that gives
13 you, with both sides, a little more, like -- makes people
14 think more about all the things that you talk about. It
15 doesn't mean you're better at mediating. It doesn't -- but
16 it does mean that people listen a little more and think about
17 it a little more.

18 So I say to that, as -- which isn't to any -- I
19 don't mean that as a criticism of Mr. Maffei or of any
20 private mediator. And there are things that private
21 mediators probably can do that a judge can't do. And I will
22 confess to you that I have almost zero experience with
23 private mediation, just in terms of my career and as a judge,
24 so it's not something on which I can really fairly give much
25 of an opinion. But I can tell you from some experience that

1 I found that effect in, like, certain categories of cases.

2 Subcontractor to contractor in construction
3 litigation, I don't know if there's any benefit to -- there
4 may be benefit to have a private mediator who's deeply
5 skilled and specialized in that area of law.

6 So I just make that observation to you. You can
7 think about that. If, for some reason, that caused you to
8 think you want to do something about that and you wanted to
9 see one of the magistrate judges, I'm happy to try to arrange
10 it. But you don't have to do anything. I'm not saying,
11 like, get back to me by Monday morning or anything. You're
12 all experienced and professional.

13 That's my observation. That's the only thing that
14 occurred to me as I was thinking about the case in realizing
15 that you had mediated. And I don't know if that would make a
16 difference. And it won't -- if you came to me and you both
17 wanted that, fine. If you didn't both come to me to want
18 that, fine. You won't hear from me about it, I don't think,
19 again.

20 So anyway, that's all I have to say about that.

21 In terms of the -- we want to go through all the
22 issues. So voir dire and picking the jury, I just want to go
23 over this, a couple things. This is the general process that
24 we'll follow --

25 For you, Mr. Hannon, probably similar to what we

1 did in Benchmark, with a slight tweak. I can't remember how
2 many people we picked in Benchmark.

3 So we'll bring in the venire into the courtroom
4 Monday morning, whenever we get the jurors, hopefully around
5 9:30 or 10:00. I'll ask the general questions. I'll go over
6 those with you in a minute.

7 But the general questions will be all yes/no
8 questions where they raise their hand. Each juror will
9 identify themselves by number. They'll have their number
10 written on a piece of paper and they'll hold it up, and we'll
11 say "juror number 2, juror number 20."

12 When we're done with that, I'll send them all out
13 to an adjacent courtroom, and I'll bring them back in one by
14 one. But the only people that I'm calling in are the people
15 who raised their hand. So if juror number 1 didn't raise her
16 hand to any question, I'm not bringing her in. I'm going to
17 go right into bringing in juror number 2, who did raise their
18 hand.

19 And I'll put the juror in the witness box, and I'll
20 ask follow-up questions about whatever it is that brought
21 them there. And you can ask -- I'll then give you both a
22 chance to ask follow-up questions. And follow-up questions
23 are on the topics that brought them into the courtroom, not
24 on, "What books do you read?" or whatever other topics.

25 And then they'll fall into, like, two categories.

1 There will be a few people I'm going to excuse on the spot,
2 because they -- it's so -- they have an obvious, serious,
3 scheduling issue, or an obvious, serious cause
4 disqualification that I basically -- either I'm not going to
5 even look to you, or I'm just going to briefly look to you
6 like, "I'm excusing this person." And unless you jump up in
7 and down, I'm going to excuse the person. But otherwise,
8 they fall into the second category; I'm just going to send
9 them out.

10 When they go past those two doors and they're not
11 in the room anymore, so you don't have to worry about them,
12 then stand up if you want to object for cause. That's the
13 time to object for cause. And if somebody -- if the -- of
14 course the staff person who's doing this is so efficient,
15 they might already have the next juror coming in. Just stand
16 up. I know what that means, and I'll tell them to take the
17 next juror out of the courtroom. And I'll hear you, and
18 we'll talk about it. And that's the time to make your motion
19 for cause.

20 If the next juror gets to the witness box and I
21 start to ask questions, the last juror is cleared. Okay?
22 Because if you raise that, they're fresh in my mind and I can
23 rule, and because your issues might make me think we should
24 ask them more questions and I can bring them back. But I
25 don't want to bring them back after we've started with other

1 people. So then I'll either excuse them for cause, or I
2 won't excuse them for cause. I'll once in awhile say, "Let
3 me think about that," and then I'll reserve and then we'll go
4 to the next one.

5 So we'll keep doing that until -- you each get
6 three strikes. What we're going to do is seat no alternates.
7 And we'll seat ten to 12 jurors, and at least ten, maybe 12.
8 And how will I decide? It's really going to be how fast jury
9 selection goes. So we're certainly -- I'm going to clear for
10 sure 16 to 17 jurors, because that will mean that we have
11 ten -- at least ten for the jury, and you're done with your
12 strikes.

13 If it's going pretty quick and it's easy to clear
14 enough to get to eleven or 12 jurors, I'm going to do that.

15 On the other hand, if we're doing this for a long
16 time, we got jurors late, we cleared 16 or 17 to get to our
17 ten, and the next nine people have raised their hand to five
18 questions each, I might say, "You know what? We're going to
19 stop here. This will give us ten or eleven, and we should
20 get going." And so we'll see. And I'll just talk to you
21 about that, and you can say something about it, if you want.

22 So once we get to the -- we've cleared enough,
23 however many we've cleared, 16 to 20, we'll stop talking to
24 people. I'll probably clear one more than we need and --
25 just in case. And then I'll bring them all back into the

1 courtroom, or at least bring everybody into the courtroom
2 through the last cleared juror and maybe one or two more.
3 And then I'll fill the jury box with the cleared jurors,
4 starting with the lowest number juror. So if 1 was cleared,
5 1 going to be in the first seat, and then whatever, okay, up
6 to however many we're putting in, ten or 12, whatever number.

7 And then --

8 (The Court and the deputy clerk confer.)

9 THE COURT: So then strikes. So you each get
10 three. So the first round, plaintiff goes. And plaintiff
11 goes first, and you'll exercise -- I forget -- I forget how I
12 did it -- I'm sorry I'm a little confused, because this trial
13 I just did, it's a pro se plaintiff who's in custody, and I
14 did it a little differently, just to accommodate that.

15 So in any event, you'll go first. I think I did
16 you do two strikes -- no, no, you do one and one. Yeah.
17 Because it's a civil case.

18 You'll go first, Mr. Hannon. You'll be -- you'll
19 strike somebody, if you want.

20 And then you'll go and strike.

21 And just go back and forth, one by one, until
22 you're either out of strikes or you say there's no one else
23 in the box that you want to strike. And same for the
24 defendants.

25 And then I'm going to excuse everybody you struck.

1 Anybody you didn't strike, they're on the jury. No
2 back-strikes.

3 And so then round two, I'll fill the empty seats.
4 And in round two, defendants will go first, and we'll do
5 defendant, plaintiff, defendant, plaintiff back and forth,
6 same thing. We'll just alternate rounds like that until we
7 have the jury.

8 When people get into the box, I will ask everyone
9 to say what they did for work -- what they do or did for work
10 and what their spouse, significant other, whatever person
11 they live with, did or does for work, just so you -- that way
12 you've at least heard from someone who never raised their
13 hand.

14 And then we'll have the jury, and then we're done
15 with that. We'll take a five minute break, we'll come back.
16 I'll do preliminary instructions, which I'm not going to
17 review with you. They're -- they're just like what is
18 evidence, what is not, the burden of proof. I'm not
19 precharging on the elements of the claims. And then opening
20 statements and evidence.

21 And so, generally speaking in terms of a schedule,
22 9:00 to 1:00 -- well, for the jury, 9:00 to 1:00 each day.
23 For all of you, 8:30 to 1:00. We'll meet at 8:30 to talk
24 about whatever issues need to be talked about. If it turns
25 out after time that we don't need to meet at 8:30, we'll meet

1 later, or what have you. And if we need to meet earlier --
2 that's the time to, like, give me the -- if you can, on the
3 day before -- we'll talk about this later -- you give me the
4 documents if you think I need to read something. I want to
5 go over the evidentiary issues that you anticipate will come
6 up that day. Because I can either resolve them, and even if
7 I can't resolve them, you can preview them for me.

8 My goal is from 9:00 to 1:00, the jury is hearing
9 evidence the whole time. In a perfect world, there would be
10 no sidebars.

11 I don't have a no sidebar rule. That's just, if we
12 do it well, we would -- that's what we'd accomplish.
13 Sometimes there will be sidebars and they'll have to sit
14 there, but we'll try to do that before 9:00, at the break at
15 11:00, because we'll break around 11:00 for about 15 minutes,
16 or after 1 o'clock.

17 Monday, we might go all day, just because they're
18 going to expect to be here all day. So we'll talk a little
19 more about that during the pretrial conference, depending on
20 how fast we get the jurors and how far we should go. And
21 I'll talk to you a little bit about it about how far we might
22 go on Monday.

23 (The Court and the docket clerk confer.)

24 THE COURT: So we'll keep going for now, but I have
25 a jury that's deliberating and they've reached a verdict.

1 And so one we have everyone, we have the defendants and their
2 lawyers here -- but as I said, the plaintiff is pro se and
3 he's in custody, so he has to be brought up. So once they're
4 ready for that, then we'll break. You can stay, but then
5 we'll break, I'll take the verdict, and then we'll resume.

6 Okay. Any questions about the process?

7 MR. HANNON: Just when do you expect to decide
8 regarding whether Monday is all day or not? Is that going to
9 be Monday morning you decide, you think?

10 THE COURT: No, I'm thinking of talking to you
11 about it today.

12 MR. HANNON: Okay.

13 THE COURT: What I'm really thinking, aloud, is
14 simply this. If we get the jurors at 9:30 and we're done
15 with -- I would love to get as far as we can on Monday, and
16 part of it depends how long you think the trial is going to
17 last. So the real question in my mind would be, like, do we
18 go past openings. Right? And witnesses. And because -- but
19 we'll talk about that when -- I guess that's --

20 How long do you think the trial will be?

21 MR. WATSON: I would expect that we're going to be
22 done within the two-weeks allotment. I would prefer that we
23 go longer on day one, in part because I anticipate that the
24 plaintiff will be the first witness, and given her condition,
25 I think the more her testimony is broken up, the more

1 difficult it's going to be on her, given her anxiety.

2 THE COURT: Well, if you're willing to do that, I'm
3 fine to go until 4:00 or 4:30 on Monday. And then each day
4 thereafter, we go 9:00 to 1:00, in part because it's not so
5 hard on the jury, the first day, because they expect it, but
6 also because they won't be sitting, listening to evidence
7 from 9:00 to 4:30. They'll be listening to evidence only
8 part of the day.

9 Okay.

10 Is that fine with you?

11 MR. CURRAN: Yes.

12 THE COURT: So plan on going all day until from
13 4:00, 4:30. So plan on going something like, subject to the
14 juror issues --

15 Are you ready? Are they ready with him, or not
16 yet?

17 THE MARSHAL: He's not here yet.

18 THE COURT: Okay. That's fine.

19 9:00 to 1:00, break 1:00 to 2:00 for lunch, 2:00 to
20 4:00, 4:30. And okay. And then each day thereafter, we'll
21 go 9:00 to 1:00, until they -- the last day. And that day
22 will be all day, even if it -- not only for deliberations,
23 but even if that's for closing arguments or whatever.

24 Okay. Anything else about that?

25 MR. HANNON: Nothing here, Your Honor.

1 THE COURT: Okay. So voir dire. Let me just tell
2 you what -- I'm going to give them a little statement about
3 jury service and the like. I'll introduce the parties. I
4 will -- I'll have you introduce your client, and your
5 clients.

6 Are you going to have somebody from the company
7 who's at counsel's table?

8 MS. MANDEL: We will have a representative from the
9 company.

10 THE COURT: Okay. Fine. So you can introduce that
11 person, and that's fine.

12 And I'll have you introduce yourselves and whomever
13 you're with or your assistants, whoever is going to -- if
14 you're going to have someone like that, that's fine. And
15 I'll ask them if you they know them.

16 I'll read the list of witnesses that I have. And
17 you'll just -- I think I have everybody from the list, but if
18 there's another name that you want read, you can tell me.

19 I'll ask them then anything that they know about
20 the case, interest in the case.

21 I'll ask them if they know each other.

22 Okay. So there's two questions that I wanted to
23 sort of talk to you about. One is sort of -- one of you
24 asked for a question, something about -- something like this.
25 This is my reframing of it: Have you, a family member, or a

1 close friend ever worked in the fields of psychology,
2 psychiatry, social work, other licensed therapy providers,
3 pathology, or pharmaceuticals?

4 And then I guess my question is why? And what
5 would we do with that if they answer yes?

6 MR. HANNON: I would expect that we would ask
7 follow-up questions in terms of what their experience has
8 been.

9 THE COURT: So I guess I break it apart in two
10 parts. As to pharmaceuticals, I understand I think this
11 business was pharmaceuticals in some way?

12 MR. HANNON: It's -- they're a testing business.

13 THE COURT: Testing business for pharmaceutical
14 companies.

15 MR. HANNON: I believe that's accurate.

16 THE COURT: Is that roughly right?

17 MS. MANDEL: Roughly. For these purposes, yes.

18 THE COURT: Okay. So, like, what -- like -- but
19 what difference -- what would we ask them if they worked for
20 a pharmaceutical company that would possibly bear on whether
21 they could be fair and impartial, which wouldn't be got at,
22 "Do you know these people? Do you work with PPD? Do
23 business with PPD?" Like the number of people who work for
24 pharmaceutical companies -- you can tell me, I'm just try to
25 go figure out, as to that category, as opposed to the therapy

1 category.

2 MR. HANNON: Sure. So I think it's the follow-up
3 question the might elicit helpful information.

4 THE COURT: Like what would the follow-up question
5 be?

6 MR. HANNON: In terms of what their involvement is.
7 So, for example, are they in a role at a pharmaceutical
8 company where they interact with lab businesses? Do they
9 interact with PPD's corporate parent, Thermo Fisher? They
10 might have interacted with companies that some of the
11 witnesses at issue might work for. So if they're --

12 THE COURT: So I could see -- but that could be
13 true -- like, Thermo Fisher, I don't know much about them,
14 but I read about them a little bit in the paper, I think
15 they're like a massive employer and a huge company with lots
16 of subsidiaries is my sense.

17 Sound right to you?

18 MR. HANNON: It does, yup.

19 THE COURT: If that's an issue, which I'm not
20 sure -- but why don't you just ask them if they've had
21 dealings with them? That would be more direct. Why wouldn't
22 that be more direct?

23 MR. HANNON: Sure. Because it wouldn't necessarily
24 just be Thermo Fisher. So during the course of the
25 testimony, they're likely to hear about other companies in

1 this same sort of space.

2 THE DEPUTY CLERK: They're here.

3 THE COURT: Ready? Okay. We'll break now.

4 Probably you should -- certainly you should take
5 your things, because he's going to be sitting there.

6 (Court in recess at 2:21 p.m.

7 and reconvened at 3:06 p.m.)

8 THE COURT: So I guess what I'm wondering about it,
9 there are two things about the two categories -- you can say
10 whatever you want. For the pharmaceuticals and pathology,
11 I'm just wondering, like there's so many people, what is it
12 that we're looking for, and could we ask a more specific
13 question if there's something to ask. Because otherwise, it
14 seems the case is much more not about pharmaceuticals or even
15 labs. It's much more about her. Maybe was she able
16 disabled? What was the extent of her disability? How does
17 it effect -- what are the essential features of her job?
18 What were the reasonable accommodations? Were they
19 reasonable? All those issues.

20 And you can introduce something about it, but I
21 think of all the people that I've just run into in my life in
22 the pharmaceutical industry -- and honestly, none of them
23 strike me as, like, because of that experience, they know
24 anything about anything related to this. Like I might want
25 to know if they have a -- they're business has a -- like they

1 work with PPD or Thermo Fisher, because of like -- I might
2 want to know that if that was a lawyer.

3 MR. HANNON: Yeah, I think that's a fair
4 observation, particularly given the number of jurors that may
5 be inclined to raise their hand given the breadth of the
6 pharmaceutical piece of it.

7 THE COURT: Right.

8 MR. HANNON: And I think given your observations,
9 maybe the better approach is we could be a bit more
10 thoughtful in terms of making sure that all of the potential
11 companies that are going to get mentioned, that the jurors
12 are asked whether or not they have any affiliation.

13 THE COURT: Yeah. Like if you give me a list of
14 companies, for example, I'm happy to read them when I read
15 the witness list and just say, "These are the people and
16 companies that you are going to hear about. If you work
17 with, you know these people or this company -- or you know
18 these people or work with these companies, tell us." And
19 then we can see. Like, you know, we'll get the accountant
20 who does accounting work for whatever the other company is,
21 or whomever. And I'm fine with that. Why don't you just see
22 what you think about that.

23 And then the other part -- so the therapist, what I
24 call the therapist category of people, I'm wondering is the
25 point that if they're on the jury, they should understand

1 that they're not in there as an expert and they're there --
2 like they might -- whether they work with people with this
3 particular disorder or they work in a totally different
4 aspect of those fields, they might view themselves as, like,
5 "Well, I know about that. I know what the DSM says about
6 that." Or, "I know how to read medical records." And they
7 might bring that expertise to bear in some way. And is it
8 that you don't want them to be an expert, or is there
9 something else?

10 MR. HANNON: I think it's similar to the concern
11 that you just raised. It's not just that those folks are
12 inclined to view themselves as experts, but -- but they're
13 more likely to have experiences that -- that may give them
14 some bias with respect to the issues in this case.

15 So, for example, you know, they may have a family
16 member who pursues a certain field of psychiatry or a certain
17 discipline within it, and may, even if they themselves don't
18 know it, they have some tangential knowledge.

19 So again, the point of the question is not the
20 original question itself of simply screening out everyone
21 that's got any experience.

22 THE COURT: Sure.

23 MR. HANNON: But the follow-up question of, "Well,
24 tell us what that is," and finding out if that experience is
25 something that we may have some concerns, they may have some

1 preconceived notions, And if so, asking them, "Despite that,
2 are you able to set that aside? And rather than judge this
3 based upon your own experiences, based upon the evidence" --

4 THE COURT: Sort of like the law enforcement
5 question -- a cousin of the law enforcement question in a
6 criminal case?

7 MR. HANNON: Right. Yeah.

8 THE COURT: Okay. So I'll ask them:

9 Have you, a family member, or a close friend ever
10 worked in fields of psychology, psychiatry, social work,
11 or other" --

12 Are there other licensed therapy providers besides
13 those?

14 MR. HANNON: That's not necessary.

15 THE COURT: Okay. So psychology, psychiatry, or
16 social worker.

17 And then if they say yes, we'll -- "Just tell me a
18 little bit" -- the follow-up question is, "Tell me a little
19 bit -- who it is, and tell me a little bit about what it is."
20 If they work -- they, themselves are licensed, I get it, they
21 shouldn't be, just like a lawyer is not a legal expert on the
22 jury. I'll just tell them, and can they do that, and we'll
23 see. And otherwise, what's the level of it, and we'll see.

24 Is it really, like, family member or any close
25 friend that you're thinking? I'm just thinking about are

1 they really likely to have acquired much -- it's not sort of
2 quite such a strong identification as sort of law enforcement
3 that sometimes runs in families.

4 MR. HANNON: I don't know. I think my experience
5 is doctors tend to talk with their families a lot about
6 interesting cases and approaches and all of that.

7 THE COURT: Okay. I'll leave it, see what happens.

8 That's the only -- then I'm going to ask them:

9 Have you, a family member, or a close friend ever
10 been fired from a job for reasons that you believe were
11 unfair, discriminatory; been accused of discriminating or
12 retaliating against someone in the workplace; been involved
13 in any kind of investigation at work of the same as
14 management, witness, or employee requesting an accommodation
15 for disability in the workplace or requested --

16 I think I'm going to skip the medical leave,
17 because that is -- there's -- I understand she did take
18 medical leave here. But medical leave is so broad that I
19 think with so many people raising their hand for things that
20 have nothing to do with this case. And I think the other
21 encompasses it, as well as the general question: Is there
22 anything about this case that would make it difficult for you
23 to be fair and impartial, having told them about the case.

24 I'll ask them if they've ever worked in a
25 supervisory position where you received or considered a

1 request for accommodation for an employee's disability.

2 Then there's some general questions: Have you
3 formed an opinion about the case? Has anyone talked to you
4 about the case? Are you aware of any bias or prejudice? Or
5 anything about the facts or parties in this case that might
6 make it difficult for you to be fair and impartial?

7 The rest of the stuff is just general legal
8 principles, like can you follow the law and you may only
9 decide it based on what happens in the courtroom. Have you
10 ever been involved in -- you, a family member, or a close
11 friend in a civil lawsuit as a party or witness or in a
12 lawsuit similar to this one.

13 I'll ask them if they've ever served as a juror in
14 any way and if such service might make it difficult for them.
15 So rather than bringing everyone up who's been on a jury,
16 only bring people up who think that might make it difficult
17 to serve here.

18 Language question, hearing question, schedule
19 question.

20 Let me read to you what I was thinking of saying as
21 the neutral description, and you can tell me if there's
22 something else or different that I should say:

23 This is a civil case. The plaintiff is the person
24 bringing the case. In this case, the plaintiff is Dr. Lisa
25 Menninger. The defendant is the party being sued. Here the

1 defendant is PPD Development, LP, which I will refer to as
2 PPD for short.

3 Dr. Menninger is a former employee of PPD. PPD
4 hired Dr. Menninger in August of 2015 to work as the
5 executive director of its global central labs based in
6 Kentucky.

7 In January of 2018, Dr. Menninger disclosed to PPD
8 that she suffered from social anxiety disorder and panic
9 disorder, and she requested that PPD provide her with
10 accommodations for these conditions. She alleges that
11 thereafter, PPD failed to provide her with reasonable
12 accommodations for her medical condition, discriminated
13 against her on the basis of her conditions, and retaliated
14 against her for requesting accommodations.

15 Dr. Menninger further allegations that PPD's
16 actions severely exacerbated her preexisting medical
17 conditions, caused her to develop major depression, and
18 ultimately rendered her enabled to work. She seeks to
19 recover for the lost wages and emotional distress that she
20 alleges she suffered as a result of PPD's alleged actions.

21 PPD denies Dr. Menninger's allegation.

22 Fine? Any changes, additions, subtractions?

23 MR. HANNON: That's fine from our perspective,
24 Your Honor.

25 MS. MANDEL: And fine from ours.

1 THE COURT: Fine. Okay. So that's pretty much
2 everything for the voir dire. The only follow-up that you'll
3 get me -- you'll file some -- talk to each other, what list
4 of company names I should read when I read the names of the
5 witnesses.

6 MR. HANNON: Okay. And you want that before Monday
7 morning or --

8 THE COURT: Honestly, I -- I just need it before
9 the jurors come in.

10 MR. HANNON: Okay.

11 THE COURT: It doesn't really matter when. I just
12 need to have in my hand before they come in the room just so
13 I can read it.

14 But if all of you agree, I'm going to read the
15 names. I don't have a problem with that. It makes sense to
16 me. I generally think we should read names of people, even
17 if they're not witnesses, if they're someone they're going to
18 hear a lot about, where they might have to make a decision
19 about that person.

20 So, for example, in this trial, I read the names of
21 the perpetrators, even though one of the perpetrators in no
22 way was he going to be a witness. Because if they knew him,
23 if they were the victim, they shouldn't be on the jury.

24 So fine. Just give me the names. No problem.

25 All right. So that brings us to the motions in

1 limine. Let me --

2 One thing back about the schedule. So if we start
3 on Monday and we go 9:00 to 4:00, 4:30.

4 Do you know, Kellyann, how many people are
5 impaneling on Monday?

6 THE DEPUTY CLERK: Just us.

7 THE COURT: Oh. Great.

8 So we're the only people right now impaneling on
9 Monday, which means we should get the jurors 9:30, 9:45.

10 So what time did we finish with Rice with the jury?
11 Like 11:00?

12 THE DEPUTY CLERK: Like 11:30.

13 THE COURT: So if we figure we have the jury by
14 11:30, I think two -- those two questions about the -- are
15 going to -- engender some number of raised hands. And if you
16 figure 20 minutes for the preliminary instructions, how long
17 are you each going to be for openings, about?

18 MR. HANNON: I would expect about 15, 20 minutes.

19 MS. MANDEL: Similar for us.

20 THE COURT: So say an hour to do the preliminary
21 instructions and the openings. So hopefully we're done with
22 all of that by 1 o'clock. And then we'd have 2:00 to 4:00,
23 4:30. So two, to two and a half hours for witness testimony.
24 And thereafter, 9:00 to 1:00 -- like, are you --

25 I'm going to tell the jury in the voir dire how

1 long it lasts, but I'm going to present it as a promise, like
2 that they will get it by -- we're starting on Monday, by the
3 Friday the following week. That that means that no later --
4 that means that we start closing arguments on that Friday
5 at -- no later than at 2 o'clock, really, ideally at 9:00 or
6 10:00. And that will give you time for closing arguments,
7 instruction. And they will get it by 4:00, 4:30, I would
8 feel like I met my promise. They would have at least a half
9 hour to deliberate.

10 If they get it earlier, they'll be happy.

11 My experience is that if we tell them Friday and
12 they get it Friday, they're okay. If they get it Thursday
13 earlier, they're thrilled. If they get it after Friday, then
14 they get grumpier. So it's better to tell them in advance
15 longer, than it is to extend it afterwards. Sometimes we
16 have to extend it. Snowstorms are different, and that
17 doesn't count. That doesn't count in my mind as an
18 extension.

19 So I'm just -- so does that seem -- you all know
20 the case better than I. Like if we do that, and efficiently,
21 will we -- like you're comfortable and reasonable with that?

22 MR. HANNON: I am, Your Honor.

23 MS. MANDEL: We are, as well. Thank you.

24 THE COURT: Good. Okay.

25 Motions in limine. I've read them all. I want to

1 talk first about defendant's motion to exclude documents
2 produced on February 24th, number 103. And let me just
3 explain the -- what I discern from this, and maybe you have
4 an explanation, Mr. Hannon. But I looked through this, and
5 so on the Rule 26 disclosures that I have, that were
6 submitted with these exhibits, you list backpay, front pay.
7 Are these stock options -- the stock and the stock options,
8 are they within pay? I don't know. They're not wholly
9 different, but I don't ordinarily think of them exactly as
10 pay. But I understand she gets them as pay in a way. And
11 there's no particular computation there, though, of that.

12 And then there's the interrogatory answer, where
13 clearly you say she would have been entitled to -- you not
14 only lost salary, and so forth, but other things she would
15 have been entitled to, in connection with her employment with
16 defendant, i.e., stock options, equity, et cetera. If I read
17 that, I would think he was going to be claiming that. That's
18 what he said in response to the interrogatory.

19 And then you then say the essential facts
20 establishing, that is answering the other part of the
21 interrogatory, that's for the computation of damages to these
22 categories that are reflected in the documents produced by
23 plaintiff. Plaintiff anticipates expert testimony will be
24 provided to further illuminate it.

25 But the expert specifically carves out, as you

1 point out, he's not rendering an opinion about those things,
2 so they can't find that computation damages in the expert
3 report about options or equity. And the document, the P-101
4 document, is, I have the impression, explains the basis for
5 the claim; that is, that that's the document that gives her
6 openings and grants.

7 And I'm wondering about the computation. Like how
8 do they -- I don't really know, I can't really tell. This
9 could be a super simple mathematical computation, or it could
10 be fairly complicated.

11 And anyway, so I'm wondering about that, because
12 it's not -- I'm not persuaded that it's a -- you had no idea
13 he might be talking about that. He said something there.
14 But I can also see how you -- like if I read that and I
15 didn't have any document showing entitlement and I didn't
16 have any document that explained what your calculation was
17 and the expert didn't address it, I might come to the
18 conclusion that it's not in play. And I would probably also
19 come to the conclusion, I don't need my expert to address it.
20 And I'm wondering about that.

21 That seems to me in part, in a way, what they're
22 saying, and a little more significant than just the timing of
23 documents.

24 MR. HANNON: Sure. So to clarify, the production
25 of documents included many documents demonstrating what her

1 equity rights were and what she had in terms of stock and
2 options; that all of that was timely disclosed with our
3 productions in this case.

4 P-101 is just sort of a better version of that.
5 It's sort of a clearer, kind of, one-stop shopping sort of
6 thing.

7 If you take P-101 out, we've still got all the same
8 information with respect to the documents that's out there.

9 THE COURT: You mean that she got this many shares
10 of stock and that she has this many options; and that she had
11 to sell the stock when she got terminated, and otherwise she
12 wouldn't have had to then sell the stock. And then she would
13 have had it -- absent termination on the day of termination,
14 she would have had this many options and this many grants.

15 Are you claiming that she would have accumulated
16 more before Thermo Fisher purchase, putting aside stock
17 splits?

18 MR. HANNON: We don't have any information of that
19 right now. Part of the problem is that discovery closed
20 several years ago. The Thermo Fisher acquisition happened in
21 the meantime. So there's a certain level of sort of an
22 unknown here in terms of what, if any, equity or additional
23 compensation was issued to this category of employee at the
24 time of the acquisition.

25 THE COURT: I see. So she didn't have a contract

1 that said, you know, after three years, you get 25 years, and
2 the fourth year you get another 25, and the fifth year -- so
3 if she was terminated at year three, you could say, oh, well,
4 year four, and she would have gotten this, and year five. If
5 she gets more shares than she had at the time she was
6 terminated, she only gets them because there was a
7 class-wide, so to speak, decision that everyone at her level
8 or every employee or every of some category that she would
9 have fallen into would receive some additional shares?

10 MR. HANNON: That's accurate, Your Honor.

11 THE COURT: All right.

12 MR. HANNON: Back to what I was saying about kind
13 of what was disclosed in the documents. So even if you take
14 P-101 out, we already have all the information there in terms
15 of what she owned. P-101 is just sort of a cleaner way of
16 presenting to the jury.

17 In terms of the sort of calculation, you know, the
18 problem there is that the actual calculation is largely
19 dependent upon things that have happened more recently,
20 particularly relative to the Thermo Fisher acquisition and
21 the stock actually having value.

22 THE COURT: But wouldn't you have had to, like, at
23 the close of, say, fact discovery, or some time, say, this is
24 our computation now, as of now. Sure, like, it could -- it
25 might, given Thermo Fisher acquisition, maybe you update

1 that, maybe it changes. But, like, I'm wondering, there
2 doesn't seem to be any computation.

3 MR. HANNON: Right. Only because it's a moving
4 target, right? In terms of what her equity rights are worth.
5 If we're picking a number based upon a particular day, that's
6 not going to be the value at the time of the trial. That's
7 sounds like a value that she's seeking. So certainly with
8 respect to categories like backpay, we know what was being
9 paid.

10 THE COURT: Sure.

11 MR. HANNON: But things like equity, we know what
12 she had for equity. We don't know what that equity is going
13 to be worth at the time of trial. So we could certainly give
14 a -- a value at any particular point in time, but that's not
15 really a disclosure that does anything. They know what their
16 stock is worth. So they're not -- they're not losing
17 anything in terms of us doing the math and telling them what
18 the math is.

19 THE COURT: So is your -- like at trial, assuming
20 you get to do whatever you want, is your calculation she had,
21 like -- I don't recall the numbers, but she had X number of
22 shares in your papers on this motion, and there was a 25,000,
23 or something, options. And so she had these two things, and
24 it's just the stock times 47.5. And the options -- the
25 number of options times 47.5, 47.5 being the Thermo Fisher

1 purchase price for all of those things. And as to the
2 options then minus the strike price, or whatever you had to
3 pay for them under the contract.

4 MR. HANNON: It's a little more complicated than
5 that, because there was a conversion done in connection with
6 the acquisition. So it's not a one-for-one tradeoff. So you
7 have to do a little bit of math to figure out how many shares
8 in PPD equates to how many shares in Thermo Fisher.

9 THE COURT: Okay.

10 MR. HANNON: But once you do that math, then I
11 believe the you math that you described is all that's left.

12 Is that right?

13 MR. WATSON: Are you talking about the stock split?

14 MR. HANNON: Yes.

15 MR. WATSON: Sorry. The stock split was in 2020.
16 But it's just simply multiplying by 1.8 or dividing by 1.8.
17 So it's quite simple math. That was before the Thermo Fisher
18 acquisition. But as long as you account for the stock split
19 and then two adjustments to the strike price, which are just,
20 again, adding and subtracting type calculations, you can
21 figure out the price you would have gotten at the time of the
22 Thermo Fisher acquisition.

23 THE COURT: But why don't you have to at least say,
24 "Here's our calculation"? Like it's this -- like at the end
25 of fact discovery -- maybe fact discovery ended, I forget,

1 before the stock split or after, but either without that
2 calculation or with the calculation, depending on the timing,
3 and then, like, "What we're claiming is like the value. And
4 the value -- we'll be claiming the value, you know, at" --
5 that she could just hold on to it, and it has this value. So
6 the value at trial, minus whatever she was paid for it. And
7 then you could update it with, "Well, there a stock split,"
8 or update it with -- why wouldn't you have to commit that
9 way?

10 MR. HANNON: Because there was no definitive value.
11 Right? We're talking about shares in a privately held
12 company. So until the acquisition actually takes place and
13 there's -- there's no sort of ascertainable.

14 THE COURT: All right. Well, so it was a privately
15 held company. But wouldn't you then have to say, "We want
16 either" -- wouldn't you then have to say, "We want -- one of
17 the things that we want is the value of this." Right? "And
18 then so we -- this is what we know. We think she's entitled
19 to this many options and this many shares, and we want the
20 value of that. And the value of that, we're going to have,
21 probably, an expert." Or, "We say it's worth this because of
22 some" -- whatever, you got venture financing or whatever.
23 Right? There are a lot of different ways you could do it.
24 It was a non -- presumably a nonzero number.

25 And then presumably you could change that position

1 because of events, right? That's what I'm taking from there.
2 I don't know if I'm putting words in their mouth, but I'm
3 wondering if that's what they're thinking.

4 MR. HANNON: So in terms of what we could have
5 done, I think you're right, that you can -- you know, you can
6 do a sort of valuation of a private company to come up with a
7 value of --

8 THE COURT: Here's what I'm wondering, though,
9 then, right --

10 MR. HANNON: But that doesn't necessarily get you a
11 price, because there's no actual buyer for it, right? It's
12 not until someone actually comes and buys the company that
13 you really have an ascertainable value to it.

14 THE COURT: Sure. But if it were a private
15 company, right, you would be -- you could be seeking the
16 value of those shares, and there are a variety of proof
17 methods that you could use to prove it. Like you could get
18 a -- you could have a company valued or you could look at
19 different things that they did. They got bank loans against
20 assets or their revenue is -- and you got to say, "Well, it's
21 20 X of revenue," or whatever. And when they paid somebody
22 else, they bought somebody out. Whatever. There are
23 different method that you could use to try to ascertain the
24 value of those shares that she didn't have anymore, that she
25 would have gotten.

1 And I understand those more -- like I guess what
2 I'm wondering is I could see them thinking, well, that's how
3 you would have to do one method like that for private
4 company. You didn't do that. You didn't have your expert do
5 it. So ah-ha, you must not be seeking it. We don't have any
6 way to figure out what it's worth. That's like a conclusion
7 that they might have come to. And if it were a private
8 company still, you'd probably be out of luck. Right?

9 MR. HANNON: I think that's right, Your Honor. If
10 it was a private company still, then we would be relying on
11 some kind of a valuation, and we didn't do that kind of
12 valuation. So you're right.

13 THE COURT: So then what I'm wondering is they're
14 sort of thinking you're not doing it, and all of a sudden --
15 I understand it's a simpler evaluation now than it was then,
16 but they might have come to that conclusion. And what would
17 they have done if they had known you were seeking it? Maybe
18 they would have done something differently. I don't know.
19 What do you think about that? That's what I'm wondering
20 about. That's what I sense when you narrowed it down to the
21 biggest issue.

22 MR. HANNON: One, I don't think that there's
23 anything that they could have done differently, because we
24 aren't talking about something that is disputed or
25 disputable. Right? The value of their stock is the value of

1 their stock. The stock split, it's reported in there, in
2 their documents. It's not a contested or contestable fact.
3 There's -- this isn't an issue where we're looking at
4 something that's a matter of opinion or a matter of judgment
5 here. What we're looking at is a mathematic computation.

6 THE COURT: What do you all have to say?

7 MS. MANDEL: Your Honor, I actually do think it's
8 more complicated. What the value would have been -- right,
9 first of all, it's entirely speculative at this point,
10 looking back. And indeed, the company's actions --

11 THE COURT: Which is speculative?

12 MS. MANDEL: What the value of what Dr. Menninger
13 would hold now. The company would have taken different
14 steps, had we had any idea that this was a direction --

15 THE COURT: So two different parts. One, what
16 would you have done if -- if --

17 Mr. Hannon has essentially conceded that if the
18 company were still private, he would be out of luck. He
19 couldn't be seeking the value for options, because in order
20 to do that, he would have had to have some expert or
21 something like that or point to something for valuation to
22 determine. And he said --

23 So tell me -- and if he had done that, then he
24 would have probably changed his methodology of proof, because
25 then the company sold and he would -- rather than rely on the

1 valuation of what PPD was, he might then switch to times the
2 47.5 and the, quote, simple math that he described.

3 So what would you -- had he done all of that, what
4 would you have done differently?

5 And then I guess second, why is the calculation
6 speculative or not so simple? Because those seem to me like
7 somewhat different questions.

8 MS. MANDEL: Understood, Your Honor. And what we
9 would have done is a little bit hard to say at this point.
10 Right? But we certainly would have done more to understand
11 what Dr. Menninger thought this value was, where she had that
12 information from, consulted our own people within the
13 company, both PPD and Thermo Fisher, to understand if that
14 was accurate. In any and all likelihood, we would have had
15 some type of information from Dr. Menninger's own economic
16 expert about how these numbers play out and what value it
17 might have going forward. And then we would have had our
18 expert respond, all of the things that you do during expert
19 discovery to better understand from both parties. That's one
20 thing that we would have done.

21 And I will just note that in terms of doing further
22 exploration within PPD and Thermo Fisher to understand what
23 that value is from our perspective is really no small task,
24 because we're talking about following through with people
25 who, in some instances, are no longer there. After the

1 acquisition, different things happened with that type of
2 department in the company. Right? So really, this is
3 information that, in some ways, we were no longer able to
4 obtain once we got this late disclosure of sort of this
5 approach.

6 THE COURT: So what you're saying is the following
7 is beyond hypothetical, it's fantasy. But if I said, "Oh,
8 I'm going to move the trial for three months" --

9 I'm not doing that. Okay. That's why it's
10 fantasy, but just saying.

11 If I were to move the trial for three months and I
12 said to you, "Okay. I'm moving the trial for three months.
13 I'm going to let him do this. But tell me what you need."
14 What you're telling me that you would need is you would want
15 to serve him an interrogatory that says -- or you'd either
16 need a motion to compel or an interrogatory that says, "Give
17 me the exact computation about how you're computing the stock
18 option grant and the stocks as the evaluation. Lay it out in
19 a piece of paper." That's what you would want. Essentially
20 a supplemented interrogatory 10, where you asked for that.

21 And then you would want to take that, and you would
22 go to the people in-house at PPD or Thermo Fisher and say --
23 and look at these documents, P-101 or the other documents, as
24 well as the computation, and say, "Okay. Is this right? Is
25 this how you would calculate it, assuming that -- and what

1 are the things that you see, whether" -- even if it's correct
2 or there were different dates or however you would calculate
3 it.

4 And then you would understand it and decide you
5 have -- like you agree, if she gets that far, that's the
6 right calculation. Or, no, you don't, and you would
7 calculate it this way, or whatever -- and then you would also
8 decide whether you needed your expert to opine on that.

9 Would that pretty much be what you need to do?

10 MS. MANDEL: That's right, Your Honor.

11 And part of this might have involved not only
12 additional interrogatory questions, but also trying to
13 understand was there another witness in the background,
14 perhaps a financial advisor, giving Dr. Menninger information
15 and advice to help her understand what the value of this
16 might be. This is all -- we've heard from counsel what they
17 have determined, but we really don't know where this
18 information is coming from, whether Dr. Menninger has done
19 this exploration on her own, if there's someone else helping
20 her. This has all been a bit of a black box.

21 We received 1,400 documents on February 24th, less
22 than a month before trial, and we really don't know what else
23 is going on behind the scenes in Dr. Menninger's
24 calculations. And that really shouldn't be, given the
25 lengthy discovery in the case and the opportunity for

1 additional discovery in the intervening period, if it was
2 called for by a change in business circumstances.

3 THE COURT: What do you want to say?

4 MR. HANNON: The SEC, that's where they go to find
5 the information. They don't need to go to Dr. Menninger or
6 somebody else. They go to the SEC. And the SEC has it
7 because they gave it to them. And we outlined in our
8 opposition the exact reports, the 1,400 documents, 1,400
9 pages that they got, and it's all those lengthy SEC reports.
10 And we sort of spelled out, you know, which ones have the
11 sort of necessary numbers here.

12 But this isn't a fact issue. It's not a disputed
13 issue. They can provide hypotheticals of different things
14 they might have wanted to ask or places to look, and all of
15 that. They didn't to look in any of those places; it's in
16 their own report.

17 THE COURT: Is there a document now that explains
18 the computation of this amount of the damages? The damages
19 arise from these two things, the options and the stock?

20 MR. HANNON: No. There's no one single document
21 that I can show you that has the precise computation. We
22 could provide that, but we've not -- there's no document like
23 that that exists.

24 THE COURT: Okay. All right. I want to think
25 about this a little bit. I think this is a -- I just want

1 to -- I want to think about it. That's why I started with
2 it.

3 I think the three LinkedIn documents, they strike
4 me as a different category. As I understand it, you said two
5 things for them, Mr. Hannon, but I'm not sure you can get
6 both things out of those documents. One thing you said is
7 there are other people working remotely, and that seems to me
8 something that you could ask people anyway. For those
9 purposes, like maybe they should have been disclosed earlier,
10 I'm not sure. It's a duty to supplement. Maybe you just
11 learned about it. I don't view it as a big issue.

12 I think that you're on notice now that he's going
13 to say those three people work remotely. And he could ask
14 anybody, I think -- or not anybody, but within the zone of
15 relation of the kind of work she did in the company, or
16 whatever, she could ask if anyone else was -- he could ask if
17 anyone else was working remotely.

18 You cited for also that they're working remotely
19 well. I don't think that their LinkedIn -- like I don't
20 think their LinkedIn can be introduced for that purpose, and
21 I'm not even sure whether the LinkedIn is admissible to
22 establish that they're working remotely or what. Because
23 it's not the defendant's LinkedIn. And these are employees,
24 and their LinkedIn isn't really their official page on their
25 website. So I don't even know if their LinkedIn pages are

1 admissible.

2 But as to them working well, I don't -- well, I
3 mean, Dr. Menninger's LinkedIn, if she had one, presumably
4 might have said she was working remotely, but I don't know
5 that the defendants could infer or argue that the LinkedIn
6 establishes that she was working -- or you could argue that
7 she was working well from that.

8 And people are on LinkedIn, you know, right up to
9 the moment they're fired. And that doesn't really prove
10 anything about that.

11 So I don't know what -- I don't know if it's
12 admissible or not. I'm not excluding it because of the
13 timing of the disclosure. Because I think the only thing it
14 really stands for is it's a piece of -- as I read it, you're
15 saying to them, "I learned this information about these three
16 people, that they are working remotely," and that's a fact
17 that, like, you can get at in the trial, with or without
18 those documents. Whether those documents are actually
19 admissible, I'm not sure. I don't think so, but I'm not
20 ruling on that now. But I don't see how they're admissible
21 to show that they're working well or successfully.

22 MR. HANNON: You're right.

23 THE COURT: Okay. Okay. So the other part of the
24 motion, which is the larger and relates to this other issue,
25 I just want to think about it a little bit.

1 Let me run through all the other motions. And I'm
2 happy to hear you about them, but let me just maybe, for the
3 interest of time, first, give you some sort of overview
4 thoughts. So the first -- just going through them in order
5 of docket number.

6 Number 100, the motion to exclude unrequested
7 accommodations. In some sense, the motion is moot. You both
8 agree with what I said in the footnote, which is that the
9 plaintiff is limited to those that are sufficiently
10 requested. And the real question is what's sufficiently
11 requested.

12 The -- there are two aspects to that that seem
13 like, from what -- the opposition, that might actually be in
14 dispute. That's what I took. Those are the things that you
15 think. One is, are plaintiff's -- Dr. Menninger's repeated
16 request for more detail about items 2 to 4 of Mekerri's
17 February 6th e-mail a sufficient request for accommodation
18 such that it goes to the jury?

19 I think that there's -- the way I think about this
20 issue is there are some things that are, like, so far beyond
21 the bounds that I would rule them out essentially on a
22 preliminary -- like 104 basis, that no jury could reasonably
23 conclude that's a sufficient request for an accommodation.

24 On the other hand, anything that's closer, like the
25 jury gets to decide whether it's a sufficient. And if

1 there's a dispute about it, there will be evidence. And the
2 jury -- I can instruct the jury what is a sufficient request.
3 And then they'll decide. And only those that are sufficient
4 will they consider in terms of requests.

5 So I'm -- that one I'm inclined to leave to the
6 jury, I'll just tell you.

7 As to conducting a good-faith investigation into
8 the internal complaints, whether that's a sufficient
9 request -- is by that you mean, Mr. Hannon, is her request
10 for an investigation itself a request for a reasonable
11 accommodation?

12 MR. HANNON: Yes. And not just the initial
13 request, but the communications and the context of why she
14 was asking for the investigation and what she wanted
15 investigated. And I'm not saying that every time someone
16 requested an investigation, it's a request for accommodation.
17 My argument would be that based upon what they knew at that
18 point about her disability and about the way different things
19 would negatively impact her health, that a reasonable jury
20 could find that they should have recognized that this is
21 something that she needed as -- in order to sort of fully
22 enjoy the -- whatever the language is in terms of what gives
23 you an accommodation.

24 THE COURT: All right. I'm going to -- probably
25 going to think about all of these things.

1 And I'll hear you. Go ahead.

2 MR. CURRAN: Thanks, Your Honor. I don't know that
3 there's any evidence or any indication that I've ever seen
4 that she asked for an investigation. She said, "I have this
5 complaint," and the company performed an investigation, as
6 it's required to do under the law. So I'm not sure that
7 there was ever even a request for accommodation. It doesn't
8 sound to me, based on what I know about the case, like there
9 was one. In terms of asking for an investigation, that was
10 not something that I think there's any indication that was
11 ever requested.

12 Also, as I'm sure Your Honor knows, there has to
13 be -- the request has to --

14 THE COURT: Never be so sure. I appreciate the
15 thought, but never be so sure that I know.

16 MR. CURRAN: Well, I was looking at *Jones v.*
17 *Nationwide Insurance*, a First Circuit case, and it says that
18 the request has to not only provide notice of the conditions,
19 but of a causal connection between the major life activity
20 that it limited and the accommodation sought. And there was
21 never any -- there wasn't even a request, but there certainly
22 wasn't any linking between, "I need this -- I need you to do
23 an investigation so that I can -- because of my anxiety, so
24 that I can do my job."

25 THE COURT: Okay. I'm going to think about this.

1 I think the general rubric that I'm thinking about is that
2 there needs to be some basis that, like, preliminary I could
3 look at to say that I might be able to infer sufficiency.
4 And if this is, then I'm likely to let it in and give it to
5 the jury. But if there isn't, then no.

6 As to the two specific examples, I'll think about
7 it. And -- but that's to the extent there are other issues.
8 To the extent the motion affects other issues, that's how I
9 would think about it, and we'll just resolve it as we go.

10 The second motion to exclude compensation data of
11 other employees. As I understand this, what -- what I
12 understand is Mr. Hannon's not seeking generally to put in
13 how much other people are paid. What he's seeking to put in
14 is the -- well, first, the people who are at a similar level
15 or held the position she held after she was left or
16 terminated, what kind of increases they received in terms of
17 percentage increases? Were those bonuses and equity plan,
18 and were those either awarded to people because of the level
19 that she was on, and therefore, it would support a reasonable
20 inference that the jury could choose to draw that she would
21 have received them, or were they somewhat discretionary, but
22 awarded to people who had the same kind of performance level
23 reviews at her?

24 Is that pretty much -- that's my sense of what
25 you're looking for.

1 MR. HANNON: Correct.

2 THE COURT: So as to that, why wouldn't that be
3 permissible? Which is different than from how much does her
4 boss make? Which I don't see -- I don't think he's asking
5 for that. And that's -- wouldn't -- there wouldn't be
6 evidence of that.

7 MR. CURRAN: Okay. Well, that was one of the
8 things that we were trying to exclude. So that's helpful to
9 know.

10 THE COURT: What I'm thinking it's narrowed to is
11 the percentage increases people at her level received, or
12 people -- if there's some categorical -- like every federal
13 employee on January 1st received an X percent increase,
14 right? So if there's things like that, that seems fair in
15 terms of her front pay argument.

16 MR. CURRAN: If there are things like that. My
17 concern is that, you know, to the extent it's based on
18 performance, she worked there for two and a half years. I'm
19 not sure there's enough of a -- of a foundation for anyone to
20 say that she was going to continue, whatever her performance
21 reviews were, and they varied. I mean, it was good the first
22 two years, bad the second year -- not bad, but okay. The
23 second year, it went down.

24 THE COURT: Yes.

25 MR. CURRAN: I don't think there's any basis to say

1 that she would have had any particular performance level
2 going forward, so I think the foundation issue would be
3 difficult.

4 THE COURT: For the discretionary kind of things,
5 as opposed to bonuses, equity, and percentage increases
6 awarded either across the board or to people in her category.

7 MR. CURRAN: To the extent that, yeah, things would
8 have been -- to the extent it showed --

9 THE COURT: So I guess what I have to say about
10 that, to some extent, that depends on the facts.

11 MR. CURRAN: Right.

12 THE COURT: The closer you can tie it, and the
13 better your chance. The further more removed it is, the
14 harder it is. And I think that would be the line. I don't
15 think I could -- excuse me -- resolve that now. But as to
16 how much did the boss make or how much did other people make,
17 it's moot because Mr. Hannon's not offering that.

18 MR. CURRAN: Understood.

19 THE COURT: So the only thing that he's seeking is
20 these three things. And what I understand the nature of the
21 real issue now between the parties is the discretionary
22 increases, the ones that weren't automatic to her category or
23 automatic to every employee. And that, I think, depends on
24 sort of enough evidence to support a reasonable inference if
25 the jury chose to offer it -- draw it, that it would apply to

1 her, given how you have shown that it applied to people who
2 were similarly situated. And the closer they are to her, the
3 more likely they could draw the inference. Okay.

4 As to -- we talked about the motion to exclude
5 documents. The motion to bar the adverse -- an adverse
6 inference on Mekerri's absence.

7 I think that's unopposed?

8 MR. HANNON: It is, Your Honor.

9 THE COURT: M-e-k-e-r-r-i, is that how you spell
10 his name?

11 All right. Fine. So that's allowed as unopposed.

12 The motion to exclude stray remarks.

13 That one is number 105, Kellyann.

14 The motion to exclude stray remarks by
15 nondecision-makers, number 107. So what I understand is
16 there's really one thing that you want. And from there,
17 they -- defendants cited a couple comments. They had an
18 e-mail -- some of it is repeating. But there's one
19 particular comment that I understood you to want. It was the
20 one you mentioned in your opposition.

21 MR. HANNON: Yeah. I think there's really two. So
22 there's the statement directly by Dr. Fikry, the caption of
23 his e-mail, where he says, "What's the timing of the exit?"
24 But then there are -- in other communications there are
25 statements attributed to him, where he's inquiring, following

1 up asking.

2 And the importance there, since we already know
3 what he's asking about, really the significance there is what
4 their response is to the question. It --

5 THE COURT: The person's response to the question.

6 MR. WATSON: That's exactly right.

7 THE COURT: That -- I don't think that's a stray
8 remark. That's -- he's the boss of her boss. And her boss
9 is somebody involved in the decision, as I understand it, or
10 the -- and the issues. And so I think that it strikes me as
11 close enough to allow it in.

12 And the jury might -- I'm not saying that it is --
13 I'm not saying he is a decision-maker and they have to factor
14 it in that way, but it seems to me that it's close enough
15 to -- that it would not be excluded as a stray remark. But
16 I'm happy to hear you.

17 MS. MANDEL: Your Honor, I just wanted to add one
18 important fact there. Dr. Menninger was not terminated. She
19 went out on a leave --

20 THE COURT: Right.

21 MS. MANDEL: -- June 3, 2018. And then she stayed
22 out on leave for eight months. So it's not a situation
23 where, say, her boss terminated her, and her boss's boss had
24 been asking --

25 THE COURT: Right. But she's claiming that in this

1 time period, she was discriminated against. Like I
2 understand her claim -- the discrimination claim in part to
3 be: I told my employer I had these two disabilities. That's
4 her position. And that then they started looking -- their
5 response was, "Let's get rid of her." And my understanding,
6 which isn't necessarily -- I'm not saying that's -- in no way
7 am I saying that's the truth.

8 But I think that's fair as part of what your theory
9 is?

10 MR. HANNON: Yes, Your Honor.

11 THE COURT: And he's the boss's boss. And my
12 understanding, in part, of your theory, is that her
13 performance was declining before you knew anything about her
14 disability, and you were just -- there were two things going
15 on. Her performance was not on the rise anymore, but it was
16 dipping; and second, there were things going on at the
17 company that were causing changes that weren't specific to
18 her that were -- that were going to apply to her, but they
19 weren't adopted because of her.

20 And that then those, like, led to this, like -- and
21 the -- the explanation might be that the people in the
22 company's view was these are essential functions of your job,
23 and we don't think we can accommodate exempting you or
24 accommodate them in some other way. Right? And that -- and
25 of course -- or any accommodation we made would be an undue

1 burden.

2 So that might be, I think -- but it's still during
3 that time period and fits with -- could fit with both
4 theories.

5 That's fair, in part, as to what I -- am I
6 understanding of, in part, your theory, correct?

7 MS. MANDEL: Actually, Your Honor, our theory and
8 what we think the evidence will show is slightly different,
9 which is that this really wasn't a case that was very much
10 about Dr. Menninger's performance at all.

11 THE COURT: All right.

12 MS. MANDEL: Some of those issues had come up in
13 2017. Those issues continued into 2018. But, in fact, these
14 questions were about something completely different. Which
15 is that after January 2018, when Dr. Menninger said, "I have
16 these disabilities, and I can't do these job functions," that
17 that became a challenge for the company to understand. Is
18 she going to stay in this job? Is she not going to stay in
19 this job? We need someone in this job from a licensing
20 standpoint, so we're just trying to understand what she's
21 saying. So. In fact, Mr. Fikry's comment were exactly that,
22 trying to understand.

23 THE COURT: And I have no doubt you will very ably
24 tell the jury that. I think that's why -- I can see how the
25 statements potentially support your position, though you

1 might prefer to support your position without them. But I
2 think they support -- potentially support Mr. Hannon's
3 position. And they don't --

4 I think of stray remarks as if, you know, the
5 person who runs -- who reported to her and runs some -- one
6 of the labs just makes a comment to a co-worker, and neither
7 of them are involved in these reasonable accommodation
8 decisions or anything else, about whatever, a comment that
9 could be inferred to be evidencing bias against people with
10 social anxiety disorder or disabled people generally, that
11 would be a stray remark. It wasn't said to the
12 decision-makers. It wasn't someone part of the process.
13 There wasn't evidence that they heard it. I think that's --

14 But he's in a different category. And the comment
15 is in the time period. And so I think that that motion is
16 denied.

17 The motion to exclude evidence about dismissed
18 claims. So again, I think this comes down to really what the
19 evidence is. You both agree to the obvious, which is that
20 evidence that is only relevant to the dismissed claim is not
21 admissible. And evidence that's relevant to a live claim is
22 not inadmissible, because it's also relevant to a dismissed
23 claim. But it can only be offered if it is relevant to a
24 live claim.

25 That seemed like the evidence is partly about the

1 evidence about a potential departure, and that might be what
2 you're all thinking about right now. I'm not sure if that's
3 the only thing or if I'm right about that.

4 Is that really what's in play in the motion?

5 MR. CURRAN: I think it's one of the main things,
6 Your Honor. And so just to --

7 THE COURT: Explain.

8 MR. CURRAN: Just to recap a little bit.

9 So in the summary judgment decision, you dismissed
10 the claim that the supposed, you know, scheme to get her to
11 leave was an adverse action in the context of the
12 discrimination claim, because you held that no reasonable
13 jury could find that it was.

14 And then with respect to the retaliation claim, you
15 looked at a specific event that occurred in February, which
16 was the meeting between Mr. Mekerri, one of the HR people,
17 and Dr. Menninger, where the HR person allegedly said
18 something about -- you know, offered her a severance package
19 and said, "Maybe you can work as a consultant or something."
20 And you ruled that that could be an adverse action for the
21 retaliation claim.

22 THE COURT: Say that again? I ruled that -- oh,
23 that the statement at the beginning of the meeting, "Do you
24 want to leave," as Dr. Menninger's version, that could be an
25 adverse action.

1 MR. CURRAN: That could be an adverse action --

2 THE COURT: For retaliation.

3 MR. CURRAN: -- for retaliation purposes. And so,
4 you know, I suppose, that's different than saying that, you
5 know, evidence of a scheme to get her to leave is an adverse
6 action for purposes of the retaliation claim.

7 I'm not sure how relevant those e-mails are to, you
8 know -- to the -- you know, what was said in February of
9 2018. To the extent they are, we would argue that it's
10 unduly prejudicial, because a jury could be confused into
11 thinking that those -- there some evidence of a scheme was,
12 you know --

13 THE COURT: Not with my jury instructions written
14 at a Ph.D. level.

15 MR. CURRAN: Well, yes, jury instructions could
16 potentially --

17 THE COURT: So it's -- the focus is on --

18 MR. CURRAN: Fikry.

19 THE COURT: -- Fikry e-mail and some other related
20 e-mails?

21 MR. CURRAN: Yeah. I believe that there are some
22 other e-mails, not just the Fikry ones.

23 THE COURT: All right. I want to think about --

24 Anything you want to say about that, Mr. Hannon,
25 beyond what's in the papers?

1 MR. HANNON: So two points. One is I -- I don't
2 think that your ruling on the summary judgment is as narrow
3 as defendants argue. I don't think you argue that only one
4 particular instance --

5 THE COURT: Decided. I don't argue.

6 MR. HANNON: I'm sorry?

7 THE COURT: Decided. I don't argue.

8 MR. HANNON: I'm sorry.

9 THE COURT: It's okay.

10 MR. HANNON: I was thinking ahead here.

11 The issue that you decided was that only one
12 particular instance could have been an act of retaliation.
13 My recollection is that you dealt generally with the theory
14 of the scheme to coerce to quit. So all of the evidence of
15 that scheme, I would suggest, is admissible for that reason.

16 But even if you had limited it to just to one
17 event, certainly the fact of all of these other things that
18 happened both before and after at least is some evidence of
19 what they were attempting to do in that February 28th meeting
20 and further what their motive and intent was.

21 As Your Honor pointed out, there is a factual
22 dispute in terms of what actually happened at that meeting,
23 and whether or not there was, indeed, the scheme to get her
24 to quit. And if that was their aim, that would certainly be
25 pertinent to the jury in determining who to believe as to

1 what happened.

2 THE COURT: Okay. I want to think about that.

3 The next one is number 111, the motion to exclude
4 evidence, the relationship. That's agreed upon. I'm just
5 allowing that motion. It's without prejudice, Mr. Hannon, to
6 what you suggested, which is if you think it becomes
7 relevant, bring it up outside the presence of the jury and we
8 can talk about it and we'll see. But for now, it's excluded.

9 And kudos for reserving it. It's hard to see how
10 it would be relevant, but I'm happy to hear you if you think
11 it is.

12 The motion to exclude the voluntary
13 self-identification answer. So one question that I have is,
14 as I understand it, Dr. Menninger's position is, I was then,
15 when I filled out that form; I was at the time of these
16 events in 2017/2018, suffering from this disability. That's
17 the position in court today. And there's no dispute that the
18 defendants didn't know, before she sent that January 12th
19 e-mail. Right? You're not claiming they knew before then.

20 MR. HANNON: Correct.

21 THE COURT: And you're not saying your client knew
22 before that. Like the first anyone in your client knew was
23 before they got that e-mail, right?

24 MS. MANDEL: Correct.

25 THE COURT: Okay. So I don't think you need it to

1 show that -- to prove that you didn't know before
2 January 2018, because they're not going to -- he's not
3 claiming it. It's practically stipulating that -- they're
4 going to argue the first time.

5 So the other part of it, if there's something about
6 that, I'll hear you. But it seems to me the real issue is
7 credibility.

8 MR. CURRAN: I think that's right, Your Honor.
9 Although, I do think that, you know, we certainly intend to
10 offer evidence. It hasn't been officially stipulated to that
11 we didn't know, as far as I'm aware.

12 THE COURT: You're going to elicit from witnesses
13 that --

14 MR. CURRAN: Yeah, I want people to say, you
15 know --

16 THE COURT: "Did you know." Right. And I think
17 that's fair. You can do that.

18 But my only point is that the -- if he crosses
19 those witnesses to challenge those statements, it could be
20 different. But it's hard to see how Mr. Hannon is going
21 to -- why or how he would do that. So it strikes me the real
22 weight and force of the document is not to have that extra
23 piece of paper when she's concedes -- she's going to concede,
24 she's going to say on the witness stand, "This e-mail is the
25 first time I said it," that no witness is going to say they

1 learned about it before. He's not going to cross anyone and
2 challenge that.

3 It's really -- the significance of that document,
4 it comes down to the credibility that she said "no" at a time
5 when she says now she was then disabled. Right?

6 MR. CURRAN: That's correct, Your Honor.

7 THE COURT: And her credibility is an issue, like,
8 obviously, in the case. I don't mean that there's anything
9 wrong with her credibility, but that's obviously something
10 that the jury is going to have to evaluate.

11 So why wouldn't it be -- I guess one argument is
12 the law about the regulation. You can tell me something
13 about that. I haven't dug into that enough to rule on that
14 now. And I'll look at that, and obviously if the regulation
15 limits it in some way, then that might be different. I'm not
16 saying it does or doesn't. But why wasn't it -- why wouldn't
17 it be relevant for credibility?

18 MR. HANNON: Because it would not be a permissible
19 inference for the jury to draw from her filling that out,
20 that in some way she was doing something that's different
21 from what she's saying now.

22 The form doesn't define what a disability is. It
23 doesn't explain the very technical definition in terms of the
24 now fairly low bar, after the ADAAA, in terms of what
25 constitutes a disability under the law. And actually, if you

1 look at the form, it has some examples there, which are very,
2 very different from the disability that Dr. Menninger had and
3 has. So that's sort of one issue, is whether or not it would
4 even permissibly support an inference that she was, in some
5 way, not telling the truth.

6 Another issue concerns, really, the sort of
7 confusion and undue prejudice to be drawn from all of this.
8 As I think some of the case law that we cite in our brief
9 points out, you know, there's an inherent reluctance on the
10 part of employees to disclose disabilities. That's why the
11 law says what it says in terms of the limited use of these
12 documents. By permitting employers to have employees fill
13 these things out, it's not intended to be a "gotcha." It's
14 not intended to be something that you can later say, "Ah-ha,
15 you didn't tell us then, you can't tell us now."

16 And that's another reason why it's not reliable,
17 and it's also a reason why it's prejudicial. To the extent
18 that a jury looks at this and says, "Well, it's unfair that
19 Dr. Menninger didn't tell them at the outset," she had no
20 obligation to tell them at the outset. And there are a host
21 of inferences that --

22 THE COURT: Well, that would be a different thing,
23 right?

24 MR. HANNON: Right.

25 THE COURT: This -- like to say that her failure to

1 tell them is -- somehow prejudiced them is different. You're
2 not claiming any damages or anything wrong done by them
3 before January 12th. That would be a different --

4 Who gets the form? Is it submitted directly to the
5 government, or does the employer get it?

6 MR. CURRAN: I believe it goes to the employer.

7 THE COURT: So somebody in HR, or something,
8 typically would receive it back.

9 MR. CURRAN: Yeah. My understanding is that one of
10 the purposes of it is to allow the federal contractor to
11 evaluate their efforts to recruit people with disabilities.

12 THE COURT: And when they -- when the contractor --
13 so it's a requirement that federal contractors do this.

14 MR. CURRAN: That's my understanding.

15 THE COURT: And when a federal contractor --
16 presumably, they provide this to the government, in some way,
17 at least in a -- like we have 100 -- we hired 100 people this
18 year. The next percent said yes to this question.

19 MR. CURRAN: Yeah. I believe they're required to
20 report statistics. I don't think they send the actual forms,
21 I think they provide statistics to the government.

22 THE COURT: Suppose somebody says yes to this form,
23 and they check off -- they don't have to check off, I guess,
24 the particular disability, but they say yes. Does that --
25 like how is that known to people? Other than the statistical

1 importance to the government, what, if anything, does the
2 company do with that?

3 MR. CURRAN: I don't know the answer to that
4 question, but I assume that, you know, if this was on the
5 other side and the plaintiff had checked "yes" and the
6 company was claiming that they didn't know that she was
7 disabled, then this would be evidence that the company knew
8 that she was disabled, you know, and that they had some
9 obligation to follow-up.

10 THE COURT: Somebody in a wheelchair and works
11 in -- like you can't move this person's office to the second
12 floor in a building with no elevator.

13 MR. CURRAN: Right. Or something that's visible,
14 and the person puts on the form, "Yes, I have a disability,"
15 that, potentially, could be argued to raise a -- an
16 obligation on the part of the company to follow-up and say,
17 which, "You know, does this disability, you know, interfere
18 with your ability to do the job?" or something like that.

19 THE COURT: Okay. Anything else you want to add,
20 Mr. Hannon?

21 MR. HANNON: Disability is a -- a bit of a loaded
22 word, and certainly to anybody filling out an employment
23 application, I -- I think there are a lot of disabled people
24 who don't identify as disabled. And for the jury to draw any
25 kind of an inference based upon the fact that when

1 Dr. Menninger got this job she did not identify herself as
2 disabled would not be a proper inference that wouldn't be
3 supported by the evidence.

4 And there are a host of other inferences that the
5 jury could draw from this evidence which would be clearly,
6 impermissible. And if this is offered, it needs to be
7 offered with a number of instructions, concerning what the
8 purpose of the form is, concerning what it can properly be
9 used for, concerning the fact that the failure to disclose
10 this doesn't change PPD's obligations. And I would submit
11 that we would spend more time instructing the jury on this
12 particular point than this has any relevance whatsoever to
13 the claims.

14 THE COURT: Okay. I want to think about this one,
15 too.

16 Then there's the motion to exclude the medical
17 expert testifying to what was not in his original report.
18 And that doesn't -- and that applies to the time period of
19 his original report. That's what I understand the scope of
20 the motion to be.

21 MR. HANNON: Yeah. Whatever is new, we agree
22 that's fair game. But in terms of new and --

23 THE COURT: Why can't he, though -- as I understand
24 the facts, everybody -- both sides had experts, did expert
25 reports. Presumably you might have done depositions or at

1 least had the opportunity. And then in January, there were
2 some more medical records that you disclosed. And then in
3 early/mid January, a little bit, pretty quickly thereafter,
4 your expert did probably a short -- I haven't read it --
5 supplemental expert report saying, "I've reviewed these
6 additional records," and either, "I stand by all of my
7 opinions, or I modify them however I modify them. Or I
8 augment them however I augment them."

9 And two weeks later, their expert says, "I've
10 reviewed those extra things," and says, "this is" -- like, "I
11 reaffirm, and this is what I do. And I have these -- one
12 opinion about the caliber of certain reports, of certain
13 medical records or documentation, and one about sort of this
14 control," which you point out.

15 But why can't they revisit what they've done about
16 the original time period? They could have a new view based
17 on additional evidence.

18 MR. HANNON: If -- if the expert said that these
19 new records led him to form a conclusion, then I think you're
20 right, that that's fair game. He doesn't say that. What he
21 says is he specifically attributes his opinion not to these
22 new records, but to prior records.

23 And it is -- it's a -- it's a significant change
24 from what his testimony was before. We did oppose him -- I'm
25 sorry, we did depose him. I specifically asked him at his

1 deposition whether or not he had the opinion that she was
2 faking it, and he said "no." And now, in their expert
3 disclosure, they have, under the guise of a supplement,
4 really had him go back in time to the start and now offer a
5 whole new category of opinion, really without even explaining
6 what necessarily the, you know, sort of opinion is. It's
7 somewhat vague in and of itself.

8 THE COURT: So what you're really saying is that in
9 the second page of his opinion, in the part that
10 starts, "Overall," you're saying he's just saying, "By the
11 way, now I have a new opinion or additional opinion about
12 her," and it's based on all the old records. And that
13 happened after the deposition, and that's not fair.

14 MR. HANNON: Right. If he had an opinion based
15 upon the old records, he was obligated to give that opinion
16 at his first -- in his first report. And the idea that, you
17 know --

18 THE COURT: And you're saying this is different
19 than if he had read these new records and said, "I've read
20 these new records. And now in light of these new records, I
21 reread the old records. And the combination of the two
22 causes me to come to the paragraph, and it's given me an
23 insight that I didn't have before," then he could do that.

24 MR. HANNON: I think he could.

25 THE COURT: And you're saying but that's not what

1 this is?

2 MR. HANNON: Correct.

3 THE COURT: What do you say?

4 MS. MANDEL: Your Honor --

5 THE COURT: Just so we're clear, I understand this
6 to be a dispute not about the entirety of his supplemental
7 report, but basically just about, on the page 2, the
8 paragraph that begins -- that's really two paragraphs, "As
9 mentioned," or, "Overall." Those two paragraphs?

10 MR. HANNON: I believe that's right, Your Honor.
11 It's the issue about, I want to say, faking it. That's not
12 the medical term.

13 THE COURT: Malingering.

14 MR. HANNON: Malingering, yeah.

15 THE COURT: But that's the paragraph overall, about
16 control and dictating.

17 MR. HANNON: Correct.

18 THE COURT: Right.

19 MS. MANDEL: Your Honor, I think what you just said
20 a moment ago is exactly right, which is that Dr. Kelly, in
21 this paragraph, seems to be going back and saying, "If we
22 look back, now we have a retrospective that goes from 2017
23 until now, and I see this pattern that I'm describing." That
24 is not in any way inconsistent with what he said earlier, and
25 it's not based only on records that he had at the time of his

1 original report several years ago. It's saying, "Now I have
2 a fuller set of data."

3 In fact, the data in this case that relates to the
4 time period following Dr. Menninger's employment really only
5 runs from 2018-2019 until now. So at the time expert
6 discovery was done, not as much of that time period has
7 passed. There's now a bigger picture, and he's describing a
8 pattern that he saw. And in fact, that's exactly what he
9 does in this paragraph.

10 And it's really no different from what
11 Dr. Summergrad, who is plaintiff's expert, did in his report,
12 which is to talk about looking at the documents and the data
13 and seeing a direct line back to 2018. That's exactly what
14 Dr. Summergrad did. Right?

15 So I think this is equivalent. It's looking at the
16 totality of the information in front of me. I am now looking
17 back at everything, including information that we've just
18 learned from 2021 and 2022 and rendering an opinion about
19 that. It's not a new or different opinion about the earlier
20 documents.

21 MR. HANNON: I respectfully disagree and -- but
22 there might be an ambiguity here, in terms of whether or not
23 this is something new that he just saw now, based upon these
24 new records that he hadn't seen before, versus something that
25 he saw before but didn't put it in his report.

1 And I would suggest that the appropriate way to
2 address that would be to provide an opportunity for voir dire
3 of the witness prior to his testimony to determine what of
4 those two it is. Is this something new that he just found
5 out, based upon what he read in these new supplemental
6 documents? Or --

7 THE COURT: You mean in the sense that he says
8 either, "I didn't see a pattern," or, "I perceived the
9 possible pattern, but not sufficient to opine on to a
10 reasonable degree of medical certainty. And then when I read
11 these additional records, it was either sufficient pattern or
12 for the first time I saw the pattern because I had a bigger
13 time scope. And if it's either of those, he had gets to do
14 it. It resolves the ambiguity. If he says, "Look, this is
15 just based -- it was there before," then he doesn't.

16 MR. HANNON: Right.

17 THE COURT: What do you say about that?

18 MS. MANDEL: Your Honor, respectfully, that sounds
19 like what we have here is a plaintiff who disclosed these
20 documents less than two months before trial, even though
21 plaintiff had them in her possession on a rolling basis for a
22 very a long time, produces her expert's view of these
23 documents. Then we produce our expert's view of these
24 documents. And this was all a rush before trial due to what
25 plaintiff produced. There's no time for supplemental

1 depositions, additional inquiries about what these reports
2 might mean. And now approximate plaintiff is trying to get a
3 quick bite of the apple on that right before trial.
4 Respectfully, it seems a very inappropriate way for plaintiff
5 to be handling these late produced documents.

6 THE COURT: I'll think about it. Okay.

7 Anything else either of you -- I'll resolve, before
8 the end of the day tomorrow, a short order resolving all the
9 motions in limine, other than the easy ones that I took care
10 of today.

11 Is there anything else either of you want to
12 address?

13 MR. HANNON: Nothing here, Your Honor.

14 Oh, actually, just one thing to mention. So we did
15 submit a witness -- I'm sorry, exhibit lists with our
16 pretrial memo. We've been working to take out some
17 duplicates on that. I think there were some things that were
18 unintentionally excluded, as well. So anyhow, long story
19 short, we're going to be submitting a joint amended exhibit
20 list, hopefully end of day tomorrow.

21 THE COURT: Fine.

22 MR. HANNON: But I think we're on the same page
23 regarding that.

24 THE COURT: Okay. Just I haven't -- I'm not even
25 sure I have the exhibits, but I haven't reviewed them. And

1 with respect to the contested exhibits, I can't -- I don't
2 intend -- though there weren't -- there are still a fair
3 number. I certainly can't rule on them without reading them,
4 having them. I don't have them, that's fine. You don't have
5 to give them to me right now. But my thought, generally, is
6 to rule on them as we go.

7 And to the extent that you can preview those issues
8 for me, like what's coming up on Monday, Monday morning
9 before we get the jurors. Or you can preview it Tuesday
10 morning, what's coming in Tuesday. And if you think you're
11 going to preview Tuesday morning, give Ms. Belmont or me the
12 documents Monday afternoon or evening so I can read them. To
13 the extent that it's the kind of thing that that would be
14 useful to do, that's helpful. And that will speed the
15 resolution and let me talk to you. It will avoid having
16 lengthy sidebars, maybe even avoid any sidebars. In a
17 perfect world, we won't have any. That's my suggestion about
18 the ones that are contested.

19 Anything else for you?

20 MS. MANDEL: Your Honor, two quick things. The
21 first is just to draw your attention, in the pretrial memo,
22 it was not a contested issue at all, but just one particular
23 issue with a witness who will certainly be testifying in a
24 second week. So it's not an urgent issue.

25 THE COURT: Oh, the one about coming up -- yeah,

1 that's fine. I have no problem with that. Happy to do that.
2 I really leave that to all of you. I won't remember that,
3 necessarily. But so just -- I think what you -- what you
4 should try to do is either call that witness at 9 o'clock,
5 like first thing, and then we'll just put the witness on the
6 witness stand before the jury comes in. Or, you know, we
7 could call -- I'm happy to say, like, we break at 11:00 one
8 morning, and you're in the middle of a witness, we could stop
9 that witness, have him come in, have him start, you know, so
10 then he can get settled in the witness box during the break.
11 And then when he's done, he leaves, and we could resume with
12 the other witness. I have no problem doing that. I suggest
13 that the two of you figure it out.

14 The only issue -- how long is the witness going to
15 testify for?

16 MR. CURRAN: I don't anticipate more than 30
17 minutes.

18 THE COURT: So here's the -- total or just direct?

19 MR. CURRAN: I would think so; I can't predict the
20 cross.

21 THE COURT: More than 30 minutes of cross?

22 MR. HANNON: Probably not, no.

23 THE COURT: So the one issue -- the practical issue
24 that you're going to face is if you call him at 9:00, he's
25 going to be done before the break. And if you call him --

1 it's easy to get him in the box with the jury out, but then
2 he's done. And if he's going to be -- it sounds like he's
3 going to be 45 minutes, you know, to an hour, that isn't
4 going to take us to another ordinary break time.

5 And so how hard is it for this person to move?

6 MS. MANDEL: Your Honor, it's not so much -- he's
7 indicated to us that he'll be able to get in and out of the
8 witness box without a lot of assistance. It just depends on
9 how he's feeling that day. It's postsurgery for him. I
10 think the real question is we just wouldn't want any
11 prejudicial assumptions made by the jury about his, sort of,
12 slow movement.

13 THE COURT: Who is the witness?

14 MS. MANDEL: It's our expert psychiatrist.

15 THE COURT: Oh, Kelly. Oh.

16 What kind of -- like did he have hip surgery or
17 back surgery?

18 MS. MANDEL: He's walking -- after some surgery,
19 he's walking with a cane to assist with his mobility while he
20 heals. So I think the concern is that it might affect the
21 view of his sort of stature.

22 THE COURT: He doesn't need to listen -- you're not
23 planning to have him listen to testimony before he testifies.
24 He's just testifying, coming and going for testimony?

25 MS. MANDEL: Yes.

1 THE COURT: He won't be coming -- he comes later in
2 the case.

3 MS. MANDEL: Correct.

4 THE COURT: So let's think about that. Here's a
5 couple of thoughts that you could think about. One is, he
6 could -- you might be using the TV, right? To display
7 things. We could have the TV moved. See that chair over
8 there in the corner? Maybe there's one, actually, right next
9 to the witness. He could also just step down and sit in the
10 chair right there and watch. He's free to do that. And I
11 have no problem with that. And he doesn't have to go too
12 far.

13 We could potentially break. It's a lot to send
14 people in and out. I'm not -- kind of like, maybe, like the
15 day he's going to testify, I don't know how, like -- how
16 difficult -- I don't have a sense of how hard it is for him
17 to move with a cane, like how weak it would make him look.
18 Like I don't -- just that he's walking with a cane, it
19 doesn't really bother me, and I'm not really sure why it
20 would bother the jury.

21 MS. MANDEL: I think, Your Honor, part of this is
22 that it's a little hard to know day-to-day. He's in the
23 period recovering from surgery, so I think it is a little bit
24 difficult to predict. So we wanted to --

25 THE COURT: So I'm happy, generally, to accommodate

1 it. And I'd say let's see. And it's easy to accommodate the
2 first part; take him out of order, he starts at 9:00 or
3 11:00, or what have you. We could think about what to do for
4 him to get out of the witness box.

5 I'm not -- I don't want to make it difficult. I'm
6 happy to try to accommodate. To break -- to send him out is
7 to spend 15 minutes. Right? It's not -- even if he's out in
8 a minute, but then they get up, they go, then they're going
9 to want to hang out and go to the bathroom and do whatever.
10 There's no way we get them back in in probably less than 15.

11 So let's see where we are and how it goes and how
12 we can work it out. I'm sure we can solve it in some way.

13 Anything else?

14 MS. MANDEL: Your Honor, one more issue, just to
15 raise an ask about any preferences in this regard. There are
16 two witnesses who will be presented through deposition
17 testimony.

18 THE COURT: Uh-huh.

19 MS. MANDEL: So we just want to understand if
20 Your Honor has any specific requests or procedures for them.

21 THE COURT: Are you -- is it video or transcript?

22 MS. MANDEL: Spoken -- read in, not video.

23 THE COURT: Read in. Just the transcript that
24 people are going to read.

25 So my suggestion -- I'm open to other ways to do

1 it. My suggestion is the lawyer asks the questions, and
2 somebody, a paralegal or someone who works for you, play the
3 witness and read the answers. And then, you know, it's fine
4 to read them in normally. You don't have to read them in the
5 most boring voice possible. But it's not the Academy Awards,
6 and don't over play it. And just like that, and just do
7 that.

8 And I would explain to the jury, it's a deposition,
9 and so Mr. or Mrs. So-and-So works for the law firm and is
10 reading the answers. And they're not the deponent, but
11 that's their answers they're reading, and you take it that
12 way. And you're going to ask questions, or something like
13 that.

14 I'm happy to do it another way if you want, but
15 that's the way I've done it in the past, or other lawyers
16 have done it in cases before me. It seems reasonable and
17 fine. And so if you have another idea, I'm open to it, but
18 otherwise, that's what I would say.

19 MS. MANDEL: And that's fine, Your Honor. I think
20 the question -- and we haven't had an opportunity to fully
21 discuss this yet, but each side has designated sort of some
22 different portions of two different deposition transcripts,
23 and so the question is if the Court has a preference about
24 whether --

25 THE COURT: Oh. You mean, like, so it's --

1 Give me the name of the witness.

2 MS. MANDEL: Hacene Mekerri.

3 THE COURT: Mekerri. Okay. So you want one part,
4 and Mr. Hannon wants a different part. Right? Surprisingly.
5 And so -- I suppose what I would say is you have one witness,
6 and you ask the questions --

7 Are the questions being asked ones you asked or
8 ones that Mr. Hannon asked or -- no.

9 MS. MANDEL: We sort of trade. So the questions of
10 Mr. Mekerri were all questions that Mr. Hannon asked. And
11 then Mason Menninger, who is Dr. Menninger's husband, is the
12 other witness, and those were all questions that I asked.

13 THE COURT: I see. I'd leave it to you first to
14 talk to each other. I don't think you should switch witness
15 speakers. That's confusing. So whoever is Mekerri should
16 be -- I think should be Mekerri for whatever questions are
17 asked of the person.

18 And whether you want to have -- whether you each
19 ask -- maybe you want to ask the questions that you want to
20 ask, and you ask the questions that you want to ask. I don't
21 have a strong preference about how you do that. All of you
22 can figure it out. And if you agree, it will probably be
23 fine with me. If you don't agree, then I'll decide if I have
24 to.

25 But I think my instinct is the witness shouldn't

1 change, the person being the witness, just because that will
2 be confusing to them. It could be different for Mekerri and
3 for Dr. Menninger's husband, but not within that.

4 Anything else?

5 MR. HANNON: Just one thing on that, on the
6 transcript. There is some objections to some of the
7 designations, and I think it's possible we might get to
8 Mr. Mekerri's testimony on Monday. So I was --

9 THE COURT: I thought you were going to have your
10 client testify on Monday.

11 MR. HANNON: There's a chance that I might have
12 some of Mekerri's testimony read first.

13 THE COURT: I see.

14 MR. HANNON: I'm thinking through in my head the
15 order here a little bit.

16 THE COURT: Okay.

17 MR. HANNON: But anyhow, just so --

18 THE COURT: So if there are disputes, it's probably
19 better if I resolve them, rather than live. So I would say
20 give me the transcript, the portion, just -- well, certainly
21 give me the portion that you want to read. All I really care
22 about is the portion that you want to read that's objected
23 to, and enough around it to have a little bit of context, or
24 something.

25 You could give me the whole transcript, if you

1 want, and just say, "Look, the disputed parts we want to
2 read, you know, page 22, line 3 to 5, and they object." And
3 tell me why. And maybe file that end of day tomorrow. And
4 I'll kind of look at it, and we can talk about it Monday
5 morning. You don't have to brief it. We can just discuss
6 it.

7 How many objections are we talking about?

8 MR. HANNON: These are my objections, by the way.
9 Just for the record.

10 If that's whether we land, yeah, I'm trying to
11 think ahead.

12 THE COURT: If I allow them to read it, then you're
13 going to read it first. Maybe.

14 MR. HANNON: No, I'm thinking more so if they
15 want -- if where we land is we sort of read it all in at
16 once, rather than breaking up and having one section read and
17 another section read later, then we should probably have all
18 the objections resolved earlier.

19 THE COURT: So I hadn't thought of that. I don't
20 have a -- I have no view on that; that is, if you want to
21 read in your case the portions that you want to read of a
22 deposition; and then later in the case, on your portion, you
23 want to read your portions, that's fine. To me -- because
24 we're not recalling anyone. And then it could be a different
25 person reading it, because it happened later. And I'm fine

1 with it. You don't have to read the deposition all at once,
2 necessarily. I defer to all of you which way you want to do
3 that.

4 As to the witnesses, my -- you know, somewhat I'm
5 curious of your view, but I'll tell you what I did in a trial
6 that I just did. Mr. Rice called the three defendants who
7 were percipient witnesses, obviously, to what just happened.
8 He called them, and I said to the defendants, "Just once. On
9 your cross, ask whatever you want to ask." And then Rice,
10 the plaintiff, got to ask on his redirect whatever came up.
11 So they were extensive.

12 So there is a benefit to sort of once calling the
13 witness, as opposed to twice calling the witness. I probably
14 would lean that way. But I'm open to -- I do lean that way,
15 but I'm open to hearing you, if you want to do it a different
16 way.

17 MR. WATSON: I prefer all at once. But that's my
18 position.

19 THE COURT: Do you care?

20 I don't think that what we do with deponents has to
21 necessarily apply to people who are live. I view them
22 differently.

23 (Counsel confers.)

24 THE COURT: You can think about that. You don't
25 have to necessarily answer that right now. I don't need to

1 know now.

2 MS. MANDEL: Yeah, we would like to think about
3 that. Thank you.

4 THE COURT: That's fine.

5 I have one other question for you. So there are
6 federal law and state law parallel claims. Based on my
7 general view and based on what you submitted as instructions,
8 unless you tell me otherwise I'm assuming you agree that I
9 just submit, like, one claim and explain the federal law
10 discrimination claim. And their verdict determines the
11 federal law claim and the state law parallel claim, rather
12 than explaining it twice and asking for separate answers.

13 That's generally what I do. I find that people are
14 generally agreeable to that. It keeps it focused for the
15 jury. It's simpler. It makes the jury instructions shorter
16 and less -- they are already complicated, but less
17 complicated. And so you can -- that's what I'm intending to
18 do.

19 And I didn't see that you really submitted
20 separately, like, state law. I don't think it really makes a
21 difference on the legal -- on what the jury would have to
22 decide. So that's what I'm intending to do.

23 And I'm doing your submissions as agreeing to that.
24 And you will have been deemed to agreed unless you object at
25 a reasonable time in advance of me -- I mean, you can object

1 for the circuit whenever you want. But if you object at the
2 charge conference, then it's kind of hard to, like, then
3 write the state law part. And you're going to have to tell
4 me what's different and why and what should I be instructing
5 them on that would be better. Like if you want that, tell me
6 now or Monday morning and submit something.

7 But I don't think you submitted separate things,
8 which is fine. Like no one -- I'm not sure I've ever
9 separately instructed people on parallel state law claims,
10 because there's no -- I can't think of a reason why to do
11 that, and so no one asks. But I'm just telling you that
12 because the claims are in there.

13 And the way you resolve that, since the claims
14 exists, is if the defendants win, you get judgment on the
15 federal claim and the state law claim. And if the plaintiff
16 wins, you get judgment on the federal and state law claims.
17 And you don't get extra damages, and it is what it is. And
18 then sometimes there's issues about prejudgment interest, or
19 something, and those follow from the -- they aren't for the
20 jury. Or if we need to ask the jury something, we can.

21 All right. I think that's it. Okay. I'll see you
22 Monday morning at 9:00. And have a good day and weekend.
23 Thanks.

24 (Court in recess at 4:27 p.m.

25 and reconvened at 4:34 p.m.)

1 THE COURT: Okay. We're back in session in the
2 Menninger case, and I understand there's a possible issue
3 about witness availability or something?

4 MR. HANNON: Yeah. So I just consulted with
5 opposing counsel regarding some logistics.

6 And backstory: So a number of the witnesses that
7 we intend to call are individuals represented by PPD's
8 counsel, Ogletree. We asked Ogletree whether or not they
9 would produce those witnesses at trial. They agreed to do so
10 in person. They're on our exhibit lists.

11 THE COURT: On your witness list.

12 MR. HANNON: I'm sorry -- I'm sorry, on the witness
13 list. Excuse me.

14 I was just advised, though, that none of those
15 witnesses are going to be made available until the second
16 week of trial, which creates possible problems just in terms
17 of our -- whether or not we're going to finish our
18 case-in-chief by the time they are made available.

19 I can certainly arrange things and arrange all of
20 them at the back to accommodate travel schedules. I'm happy
21 to do that. But there might be a situation where I'm simply
22 done with my other witnesses before the end of next week.

23 These are all individuals that I've deposed. I'm
24 happy to present them to the jury via deposition transcript.
25 We expected to call them live, because they told us they

1 would produce them live. But it just creates a logistical
2 issue, given that now they're not available until the second
3 week.

4 THE COURT: What do you want from me?

5 MR. HANNON: That's an excellent question. I don't
6 have an answer for you, except for this: Would -- would
7 Your Honor permit us to present these witnesses via
8 deposition, if they're not going to be made available next
9 week during our case-in-chief, to have their deposition
10 transcripts read in?

11 MS. MANDEL: Your Honor, we strenuously object to
12 that. These are witnesses who will be here in person. And
13 we did say that we would have them in person at trial. They
14 all live out of town. They're not at all local. And we have
15 arranged for them to be here based on our general calculus of
16 when we thought we would be getting to the time that would be
17 appropriate for us to call them and as part of our defense,
18 and that is when they arranged their travel.

19 They are people who are leaving their families,
20 their homes in other states and coming here, and they've
21 arranged travel to be here. So they're available. They're
22 going to be here, and they are going to testify live. There
23 is no reason that they should be presented through deposition
24 testimony.

25 In fact, we just learned for the first time now

1 that one of plaintiff's witnesses, plaintiff's sister, who we
2 had asked about, will, in fact, only be available to testify
3 live a week from this Monday. So it's no different, a
4 situation with that particular witness.

5 THE COURT: Slightly different, in that presumably
6 that will be during your case -- during your defense, not
7 necessarily when you exactly wished to call her, in terms of
8 the order.

9 This -- the concern I think Mr. Hannon is raising
10 is that he will possibly complete his case-in-chief before
11 he's -- his case-in-chief, other than these witnesses, will
12 be done, and those witnesses will be the -- like one or
13 several days later.

14 So my suggestion is this. I'd like the -- that
15 we're going to be going quickly, and that, therefore, your
16 case is -- you anticipate that your case is going to be done
17 before next Friday, in chief, other than these witnesses.
18 And so I think you could --

19 And what I understand is that you're prepared to
20 put them at the end of your case, Mr. Hannon, and that you're
21 prepared -- you're willing, but that might still leave them
22 being called before they're available -- before they're
23 practically available.

24 MR. HANNON: Right.

25 THE COURT: And you're prepared to call them by

1 deposition and read the parts that you want. They -- under
2 that variation, they could still be called live during the
3 defendant's case for whatever the defendants want.

4 And you wish that procedure not to be used. Would
5 that be fair?

6 MS. MANDEL: That's right, Your Honor.

7 THE COURT: So my suggestion is, first, just think
8 about, like -- here's one practical solution you could all
9 reach, which is that if you finish your case on Wednesday or
10 Thursday, then you go to your case. But your case is not --
11 you haven't rested. And you go to your case, present who you
12 will. And then the witnesses are going to be available. And
13 when they're available, you call them. And we'll just
14 rearrange the order. And I'll tell the jury, we're doing
15 this to accommodate people's schedules because people are
16 coming from different places.

17 So you can call -- I don't know who these witnesses
18 are, which ones, but Witness X lives in California, and is,
19 you know, represented by defense counsel. And they're not
20 available on Thursday, which is when, if you put them at the
21 end, you would call them Thursday morning at 9:00. So
22 they're available on Tuesday. So on Tuesday, we'll break
23 from defendant's case, you'll call them.

24 And then you can either -- you can call them and --
25 you know, some of this depends on whether they're testifying

1 once or twice, but those people -- one of the reasons we have
2 people once is to not make them, especially if they live far
3 away, to come here twice, which is a burden for people other
4 than true parties.

5 So we could have them -- you could have them
6 come -- you could call them on Tuesday, you could do your
7 part. You could either cross them or just reserve it all.
8 We could have them presented once, or they're your people, if
9 you're willing to have them come twice, you could have them.
10 And then if you don't want to get to them until Wednesday,
11 that person, you could get to them on Wednesday. So we could
12 essentially take them out of order in your case, right? Keep
13 going. That's an easy solution.

14 And live is generally better than transcript,
15 transcript being a little better than TV, in my experience.

16 But does that work for all of you?

17 MR. HANNON: I just -- I think the issue is I don't
18 expect them to have any other witnesses, besides the same
19 folks.

20 THE COURT: So in other words, if you finished --
21 when do you think you might finish before those people?
22 Rough idea.

23 MR. HANNON: It would be, you know, Thursday or
24 Friday. It's -- most likely a Friday morning kind of thing.

25 THE COURT: I see. So we're really talking about

1 just Friday, probably.

2 MR. HANNON: Probably.

3 THE COURT: Maybe a little bit on Thursday.

4 MR. HANNON: Yeah.

5 THE COURT: So the issue is that, at that point,
6 all of the witnesses that you wish to call, who are under
7 their control, are -- you don't have other witnesses that you
8 would be calling. Like say he finished Thursday -- Thursdays
9 before 1 o'clock or Friday morning, is there anybody that you
10 would have to call who doesn't fall into this category of
11 people he wants to call who are available only the following
12 week?

13 MS. MANDEL: I'm just trying to understand the --

14 THE COURT: In other words, he -- like let's say he
15 said to me, "Judge," -- it's Thursday at 10:30 or Friday
16 morning at 10 o'clock, and he says, "Judge, I'm done with all
17 the witnesses that I have. There are some more witnesses,
18 but they're not available until next week."

19 They're the, I'll call it, five people who do or
20 did work for your client, who you've agreed to produce, but
21 they're not available until the following week. So then I
22 would turn to you and say, "Okay. Is there anyone for you to
23 call."

24 MS. MANDEL: Right. So we have -- there's one
25 witness -- the person who will be our client representative

1 with us through the case is also a witness who we plan to
2 call, and she'll be here through the duration.

3 THE COURT: And how long of a witness is she? Is
4 she like ten minutes or is she like --

5 MS. MANDEL: No, I'd say she's probably more like
6 an hour.

7 MR. HANNON: Can I ask who that is, Judge? Because
8 that's one of the people on my list.

9 MS. MANDEL: That's Deborah Ballweg.

10 MR. HANNON: Okay. All right. Well, that's
11 helpful to know that she'll be available all week.

12 THE COURT: So she's going to be here anyway.
13 She's one person who solves -- partway.

14 So I think, in the first instance, let's see if
15 this issue arises. Move quickly. I'm happy to phase this
16 issue, because it means we're going quickly. So don't slow
17 down to avoid the issue.

18 MR. HANNON: I'm just sensitive to the if we stop
19 at 12:40, you want another witness on the stand.

20 THE COURT: Yes, I'm glad you're sensitive to that.

21 And that is my view. I didn't say that this
22 morning. Mr. Hannon knows that from the last trial. So not
23 only at 12:40, at 12:55 call another witness. So 9:00 to
24 1:00 means 9:00 to 1:00, not 9:00 to 12:30, not 9:00 to
25 12:55.

1 So let's see where we are at the end of the day
2 Monday or Tuesday morning, and then we'll see and figure out
3 if there's some solution. It might depend, also, how long
4 it's going to take and how much time there might be and
5 whether there's someone else we could substitute it. I think
6 that's the time -- we'll have a better handle on it then.

7 MR. HANNON: Okay. Thank you.

8 THE COURT: Okay. Anything else? No. All right.

9 MR. HANNON: Bye again.

10 THE COURT: Bye again.

11 THE DEPUTY CLERK: Court is in recess.

12 (Court in recess at 4:43 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 13th day of June, 2023.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR
Official Court Reporter